

# Conditions of use

**Port Hedland International Airport**  
Operated by PHIA Operating Company Pty Ltd

Current as at 20<sup>th</sup> May2019

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## Background

- A The Town of Port Hedland owns the Airport Land on which the Airport is situated.
- B The Town leases the Airport Land to PHIA Asset Trust.
- C PHIA Asset Trust subleases part of the Airport Land to us.
- D Pursuant to the terms of a management agreement with PHIA Asset Trust we operate the Airport.
- E We agree to supply Aviation Services and Government Mandated Services to you on the terms of these Conditions unless otherwise agreed.
- F In consideration of the supply of the services described in paragraph E above, you agree to pay the Charges and otherwise comply with your obligations under these Conditions.

## Agreed terms

### 1 Defined terms and interpretation

#### 1.1 Interpretation

##### Parties

- (1) **We, Us, Operator** and **Our** is PHIA Operating Company Pty. Ltd. of:  
Port Hedland International Airport, Great Northern Highway,  
Port Hedland WA 6721  
Telephone: + 61 8 9160 0500  
Facsimile: + 61 8 9172 2074
- (2) **You**, and **Your** shall be either:
  - (a) the Aircraft Operator; or
  - (b) a user of the Airport who may incur Charges under these Conditions.

#### 1.2 Date of currency of these Conditions

These Conditions are current as at the date on the front page of these Conditions, until we change, replace or waive them.

#### 1.3 Conditions generally

These Conditions may be an attachment to another agreement between you and us, or the only agreement governing our relationship.

## **2 These Conditions**

### **2.1 Users of our Airport**

- (1) Unless we have agreed different conditions with you, these are the conditions under which you use the Facilities and Services at the Airport.
- (2) Despite the fact that you may not have signed these Conditions, by using any of the Facilities and Services at the Airport, you accept these Conditions, and agree to be bound by them as amended, and all of our rules and reasonable directions from time to time.
- (3) Subject to any contrary requirement under any Legislation we may, by the methods set out in Condition 2.6, change, replace or waive any of these Conditions at any time upon the publication of written notice. Upon such publication you are deemed to be bound by any changes made, and the use of our Facilities and Services or our Airport generally following publication of those changes will be deemed acceptance of the changes.
- (4) In consideration of the supply of the Facilities and Services and Government Mandated Services for your use, you agree to pay the Aviation Charges and Government Mandated Services Charges and otherwise comply with your obligations under these Conditions.

### **2.2 Facilities and services at our Airport**

- (1) We agree to supply to you:
  - (a) the Airport's Facilities and Services;
  - (b) Government Mandated Services subject to Condition 2.4; and
  - (c) Aviation Services.
- (2) We agree to supply Aviation Services and Government Mandated Services in accordance with:
  - (a) these terms and conditions;
  - (b) all applicable laws and regulations;
  - (c) any and all service levels in the form of Performance Measures;
  - (d) in the case of Government Mandated Services, as required by the Department or the relevant authority;
  - (e) all due care and skill; and
  - (f) otherwise in a manner consistent with other Domestic and International airports (inclusive of but not limited to Regional Operations, Charter Operations and General Aviation Operations).

### **2.3 What these Conditions cover**

These Conditions cover the use of the Facilities and Services and the provision of Aviation Services and Government Mandated Services. We will charge for the use of the Facilities

and Services and the provision of Aviation Services through the Aviation Charges, and for the provision of the Government Mandated Services through the Government Mandated Charges.

#### **2.4 What these Conditions do not cover**

- (1) These Conditions do not cover the provision by us to you of:
  - (a) General Airport Services, or charges for these services. We will use our best endeavours to provide General Airport Services on separate commercial terms and at commercial rates; and
  - (b) the services listed in Condition 14.
- (2) We are not responsible for the security of your aircraft. However, you must comply with any of the safety or security requirements of the Airport of which we notify you of from time to time.

#### **2.5 Notification of the existence of these Conditions**

- (1) We will take all reasonable steps to notify you of the existence of, and the requirement to comply with these Conditions prior to your use of our Airport via the Website.
- (2) Subject to Condition 2.6(2) if you continue to use our Airport after being notified, or after we notify you that the Conditions have been amended, then such continued use will constitute acceptance of these Conditions and their amendments from time to time.
- (3) Notwithstanding that these Conditions, or any change, replacement or waiver of these Conditions, have not been notified to you, you are liable to pay the Aviation Charges and Government Mandated Services Charges applicable at the time of your use of the Airport in accordance with these Conditions.

#### **2.6 Changes to these Conditions**

##### **(1) Major Users**

- (a) For Major Users of our Airport, if we want to make changes to these Conditions, we will:
  - (i) notify you by e-mail to the address we have been most recently officially given or other means of a proposed change to these Conditions and where it is practical to do so, we will notify you at least 30 Business Days before the change is to take effect (however we reserve the right to vary Aviation Charges at any time as per Condition 7.4, and where the Government Mandated Charges are varied, these will be passed on to you); and
  - (ii) consult with you in good faith regarding the proposed change to these Conditions during the period of notice.
- (b) As soon as practicable after consulting with you, we will notify you by email to the address we have been most recently officially given or other means of the changes to these Conditions. We will also publish the agreed changes on the Website.

(2) **Non Major Users**

- (3) If you are not a Major User of our Airport, we will give you notice of any agreed changes to these Conditions by email to the address we have been most recently officially given or other means including via our Website once the changes have been implemented.

(4) **All Users**

All users of our Airport, which continue to use our Airport after notification of the changes, will be deemed to accept the changes to these Conditions.

**2.7 Terms and Words**

Terms or words used in these Conditions and the attached schedules that require defining are explained in Schedule 1.

**3 Use of Airport**

- (1) These Conditions govern your use of the Airport, the Facilities and Services and any other services at the Airport. By using the Airport you accept these Conditions.
- (2) These Conditions apply equally to Domestic and International operations, Regional Operations, Charter Operations, Freight Operations and General Aviation Operations.
- (3) You accept that:
- (a) access to the Airport and the Facilities and Services are subject to the demand of other users of the Airport;
  - (b) use of the Airport and the Facilities and Services is governed by relevant laws;
  - (c) we may close all or any part of the Airport and withdraw all or any part of the Facilities and Services, for any period we consider appropriate when in our reasonable opinion it is necessary to do so;
  - (d) other responsible parties beyond our control (which may include CASA, the Department, Australian Border Force, Airservices Australia or the Australian Federal/State Police) may close all or any part of the Airport, for any period they consider appropriate when in their reasonable opinion it is necessary to do so; and
  - (e) we will not be liable for any loss or damage you sustain as a direct or indirect result of any planned or unplanned closure of the Airport, or the unavailability of any Facility or Services unless caused by our negligence.
- (4) You accept that unless otherwise specified in writing, these Conditions prevail over any other oral or written agreement we have with you.
- (5) You agree that when operating Aircraft at the Airport you must comply with the CASA requirements as published in the Civil Aviation Advisory Publication (Operations in the Vicinity of Non-Controlled Aerodromes) CAAP 166-1 as updated from time to time.

## **4 Our contact details**

### **4.1 Service of Notices**

Any notice, demand, consent or other communication concerning these Conditions must be in writing and be:

- (1) signed by that party, its Authorised Officer, or by its solicitors; and
- (2) served by being delivered personally to the party, or by sending it by registered mail to:
  - (a) the address most recently notified by that party; or
  - (b) the registered office if a company; or
  - (c) or the address indicated on these Conditions; or
  - (d) by sending a facsimile transmission to the number provided for that purpose.

Any notice, demand, consent or communication sent by post will be deemed to be served when the letter would be delivered in the ordinary course of post. Any change of address for the service of notices of either party must be notified in writing to the other party within seven (7) Business Days of the change.

### **4.2 Contact Information**

You can contact us by any of the following means:

- (1) by mail to  
General Manager  
PHIA Operating Company Pty Ltd  
Port Hedland International Airport,  
PO Box 356,  
Port Hedland WA 6721
- (2) by facsimile to  
(08) 9172 2074 – For calls made from within Australia  
+61 8 9172 2074 – For calls made from outside Australia
- (3) by e-mail  
[enquiries@phia.com.au](mailto:enquiries@phia.com.au)
- (4) by telephone
  - (a) Business Hours:  
(08) 9160 0500– For calls made from within Australia  
+61 8 9160 0500 – For calls made from outside Australia

- (b) After Hours Emergency:
  - 0417 108 850 – For calls made from within Australia
  - +61 4 17 108 850 – For calls made from outside Australia

## **5 Compliance with laws**

### **5.1 General compliance obligations**

- (1) When using the Facilities and Services, or any other services at the Airport you must comply with:
  - (a) these Conditions;
  - (b) all relevant Legislation, including the *Civil Aviation Act 1988* and Regulations and the *Air Navigation Act 1920* and Regulations, all relevant Air Services Australia publications and any direction from the Civil Aviation Safety Authority;
  - (c) all requirements of Airservices Australia and directions from CASA applicable to the conduct of civil aviation to, at and from the Airport;
  - (d) the operational requirements of the Airport as published in ERSA, NOTAMs and Aeronautical Information Publications;
  - (e) the environmental requirements as described in the Airport Environmental Policy as applicable from time to time;
  - (f) applicable environmental Legislation;
  - (g) work health and safety Legislation in place from time to time, and any reasonable direction by us (or our Personnel) in relation to work health and safety matters at the Airport; and
  - (h) other conditions, instructions, orders and directions necessary for the day to day operation of the Airport and as published by us from time to time;
  - (i) local flying restrictions;
  - (j) directions on security from the Department;
  - (k) the Airport's security requirements as specified in the Transport Security Programme as implemented at the Airport from time to time;
  - (l) any noise management procedures or regulations in place from time to time by the relevant statutory authority;
  - (m) directions from any other person empowered by any relevant law to give same; and
  - (n) operational requirements of the Airport as specified in the Aerodrome Manual from time to time; and
  - (o) any plan or procedure we have implemented at the Airport to satisfy the requirements of any Commonwealth or Western Australian government agency governing the operation of the Airport.



- (2) You are responsible for familiarising yourself with all matters referred to in Condition 5.1(1).
- (3) You must not do anything that puts us in breach of any legislation or undertaking made pursuant to legislation.
- (4) We need not give you any information which would result in us breaching any confidentiality or privacy obligations, or security restrictions. If we provide you with any information and require that disclosure be limited to certain authorised personnel, you must comply with this request.

## 5.2 **Default and termination**

Where you are in breach of these Conditions, we may, subject to any restrictions contained in any relevant Legislation (if any), terminate your right to use our Facilities and Services upon 10 Business Days written notice.

# 6 **Information we require from aircraft operations**

## 6.1 **Regular Public Transport (RPT) Operations**

For aircraft and operators involved in RPT Operations:

- (1) before using our Facilities and Services at the Airport you must give us and any person nominated by us the information we require, including:
  - (a) your name, address, ABN and contact details;
  - (b) evidence that you have a security program that meets the requirements of our security arrangements and any relevant requirements under the *Aviation Transport Security Act 2004 (Cth)*, *Aviation Transport Security Regulation 2005 (Cth)* and any other Legislation;
  - (c) evidence that you have in place emergency procedures in connection with all potential threats to the Airport, passengers, cargo, the public and the Facilities and Services at the Airport as appropriate to your operations and at least to the standard required to comply with the Aerodrome Emergency Procedures and the Aerodrome Emergency Plan;
  - (d) the names, addresses, telephone numbers (business and after hours), facsimile numbers and all other contact details of your key personnel we can contact at any time about emergencies, security, operational or financial matters in connection with you using the Facilities and Services at the Airport;
  - (e) evidence of the insurance policies you hold that are consistent with the requirements of Condition 22, and confirmation that these policies will remain current at all times when you are using the Facilities and Services at the Airport;
  - (f) ground handling arrangements for passengers, baggage and cargo if required for your operations;
  - (g) the model and types of aircraft you will operate;
  - (h) arrangements for the handling, servicing, fuelling and if required, the repositioning of stationary aircraft;

- (i) confirmation that the types and standards of aircraft being flown by you into and from the Airport are compliant with the Air Navigation (Aircraft Noise) Regulations; and
  - (j) your needs for facilitation (for example, Customs and security services).
- (2) You must provide us and any person nominated by us with the details of any changes made to information you have provided under this Condition 6.1 within 1 month of such change, or immediately on demand by us where such advice is necessary for us to be able to continue to provide you the Aviation Services or where the operations of other uses might be affected.
- (3) You must also within 5 Business Days after the end of each calendar month provide us and any person nominated by us with the number of passengers per flight that you embarked and disembarked at the Airport during the previous month, together with the number of those passengers who were transit passengers which must be shown separately. We require this information to assess the Aviation Charges and Government Mandated Charges payable by you in a given month.
- (4) Where you fail to provide the information mentioned in Condition 6.1(3), we will calculate and levy the Aviation Charges and Government Mandated Charges based upon the presumption of maximum seat load capacity as published by you, which amounts you are required to pay before we will enter any meaningful discussions to have the correct load capacity determined.
- (5) If we ask you to do so, you must give us certified statements from your auditors verifying the accuracy of the information you have provided us under this Condition 6.1. You must give us the statements within 30 Business Days of the date of our request, which shall be made no more frequently than once a year. Your auditors must be members or affiliates of an internationally recognised and independent accounting firm.
- (6) You agree that we may, and permit us to conduct an independent audit at our cost, of the information you provide us under this Condition 6.1.
- (7) If the information we obtain from the audit we carry out, identifies any error in the information you provided us with, we shall be entitled to calculate and levy Charges based upon the information obtained from the independent audit.
- (8) If the error identified is in our favour by 5% or more based on the information you have given to us, then you must reimburse us the cost of the audit carried out by us under Condition 6.1(6).
- (9) Where you advise us that the information given to us under this Condition 6.1 is commercially sensitive, we shall use our best endeavours to maintain its confidentiality.

## **6.2 Non-Regular Public Transport Operations**

For aircraft and operators not involved in RPT Operations:

- (1) Before using our Facilities and Services at the Airport you must give us and any person nominated by us such information as we may require including:
  - (a) your name, address, ABN and contact details;
  - (b) evidence that you have in place emergency procedures in connection with all potential threats to Airport, passengers, cargo, the public and the Facilities and Services at the Airport/s as appropriate to your operations and

- at least to the standard required to comply with the Aerodrome Emergency Procedures and the Aerodrome Emergency Plan;
- (c) the names, addresses, telephone numbers (business and after hours), facsimile numbers and all other contact details of your key personnel we can contact at any time about emergencies, security, operational or financial matters in connection with you using the Facilities and Services at the Airport/s;
  - (d) evidence of the insurance policies you hold that are consistent with the requirements of Condition 6.1 and confirmation that these policies will remain current at all times when you are using the Facilities and Services at the Airport/s;
  - (e) ground handling arrangements for passengers, baggage and cargo if required for your operations;
  - (f) the model and types of aircraft you will operate;
  - (g) arrangements for the handling, servicing, fuelling and if required, the repositioning of stationary aircraft;
  - (h) confirmation that the types and standards of aircraft being flown by you into and from the Airport are compliant with the Air Navigation (Aircraft Noise) Regulations Chapter 2 phase out program;
  - (i) confirmation of the ownership details for all your aircraft using the Facilities and Services; and
  - (j) MTOW for your aircraft using the Facilities and Services.
- (2) You must provide us and any person nominated by us with the details of any changes made to information provided to us under Condition 6.2(1) within one month of such change, or immediately or on demand by us where such advice is necessary for us to be able to continue to provide you the Aviation Services or where the operations of other users might be affected.
  - (3) You must also within 5 Business Days after the end of each calendar month provide us and any person nominated by us with the number of passengers per flight that you embarked and disembarked at the Airport during the previous month, together with the number of those passengers who were transit passengers which must be shown separately. We require this information to assess the Aviation Charges and Government Mandated Charges payable by you in a given month.
  - (4) Where you fail to provide the information mentioned in Condition 6.1(3), we will calculate and levy the Aviation Charges and Government Mandated Charges based upon the presumption of maximum seat load capacity as published by you, which amounts you are required to pay before we will enter any meaningful discussions to have the correct load capacity determined.
  - (5) Where the information required by this Condition is not provided, we will obtain such of those details as are located on the CASA register and the equivalent International aircraft registration bodies, and:
    - (a) we shall determine the MTOW for the aircraft; and
    - (b) the registered owner and/or aircraft operator as indicated on the CASA and/or equivalent International aircraft registration bodies will be held jointly and severally liable in relation to all costs and charges levied.

- (6) Where you fail to provide the information required under Condition 6.2(1), we shall be entitled to calculate and levy our Aviation Charges and Government Mandated Charges based upon the registered Maximum Take Off Weight as published by CASA or Janes Book of Aircraft or similar recognised reference, which amounts you are required to pay before we will enter any meaningful discussions to have the actual MTOW determined.

### 6.3 All aircraft and operators

- (1) For all aircraft and operators whether or not involved in RPT Operations:
  - (a) you are responsible for ensuring that written notification is given to us and any person nominated by us if the ownership of any aircraft being operated from the airports changes, or if the operator of any such aircraft changes; and
  - (b) where you fail to provide the information required under Conditions 6.1 and 6.2 above, we shall be entitled to calculate and levy our Charges based upon the presumption that the aircraft continues to be operated and/or owned by you.
  - (c) It is your responsibility to determine if the "PHIA Aircraft Parking Form", available on our website, may be required for your operations.

### 6.4 Any information to be provided in accordance with this Condition 6.3 is to be provided to us and any person nominated by us using the contact details provided at Condition 4.2. If possible, we prefer to receive information electronically. Other information to be provided

- (1) We and Operators involved in RPT Operations and their representative organisations may meet biannually to discuss and review the information requirements of us with a view to ensuring that such Operators continue to provide us in a timely and meaningful fashion information which is essential to us efficiently running our operations and to achieving mutually acceptable parameters with respect to the provision of such information.
- (2) An Operator involved in RPT Operations shall furnish to us, in such form as we may from time to time reasonably require, further information (if such Operator ordinarily collects such information and it is readily accessible) relating to the Operator's use of the Facilities and Services relating to but not limited to:
  - (a) Traffic information:
    - (i) Passengers carried and load factors and route;
    - (ii) Diversions aircraft – number of passengers who disembarked;
    - (iii) Transfer component over the Airport;
    - (iv) Diversion aircraft identifying those aircraft which landed and departed with disembarking passengers;
    - (v) Number of infants, wheelchair passengers etc;
    - (vi) Freight/mail statistics (details as for passengers above if possible); and
    - (vii) Flight specific information

- (b) Specific needs information:
  - (i) Whether a large number of passengers requiring specific needs (e.g. wheelchairs or a large number of people to meet and greet) can be reasonably anticipated.
- (c) Environmental issues:
  - (i) Fuel/oil spills; and
  - (ii) Foreign object debris/litter control
- (d) Product
  - Early notification of contemplated changes in:
    - (i) Aircraft type changes;
    - (ii) New technical systems, security procedures, etc.; and
    - (iii) Change in or proposed changes to the ground handling agent.
- (e) Surveys
  - Agreement to share information in regard to:
    - (i) Relevant airport information in any Aircraft Operator's survey which may be undertaken from time to time; and
    - (ii) Reasonable access to the Aircraft Operator's passengers for our surveys with prior notice.

#### **6.5 Method of delivery of information**

An Aircraft Operator must provide us and any person nominated by us with the information requested in 6.4,

- (1) If appropriate, by email to our email address (we prefer this method where possible); or
- (2) In writing delivered or faxed to our office; or
- (3) Electronic file transfer; or
- (4) By any other means that we agree with an Aircraft Operator.

## **7 Aviation charges**

### **7.1 Application of Aviation Charges**

- (1) You must pay us the Aviation Charges once you use the Facilities and Services at the Airport. More specifically:
  - (a) if you use the Facilities and Services for RPT Operations, you must pay the RPT Charges and such of the Other Charges applicable to you; and
  - (b) if you use the Facilities and Services for non-RPT Operations, you must pay the Other Charges applicable to you.
- (2) Your use of our Facilities and Services shall occur upon the landing, take-off or parking of any aircraft under your ownership or control on or from our Airport.

### **7.2 Calculation of Aviation Charges**

The amount of Aviation Charges you must pay will be calculated in accordance with Schedule 2 as varied from time to time. By using our Facilities and Services you agree to pay the Aviation Charges appropriate at the time of use.

### **7.3 Payment of Aviation Charges**

- (1) All Aviation Charges become due and payable when you use the Airport and must be paid before your aircraft leaves the Airport, unless you have made other written arrangements for the provision of credit with the Airport which must be signed by both parties.
- (2) The Aviation Charges are payable in Australian dollars only, or they may be paid in US dollars if the parties agree.
- (3) Where invoices are issued in relation to the Aviation Charges, payment of those Aviation Charges must be made in accordance with our regular trading terms which will be specified on each invoice rendered, unless otherwise agreed.
- (4) You must pay the Aviation Charges by the date specified in the invoice either by:
  - (a) direct deposit into our bank account. The details of which will be provided on request;
  - (b) cheque made payable to "PHIA Operating Company Pty Ltd", noting that you may also be responsible for bank charges incurred in cheque processing;
  - (c) EFTPOS (including a reasonable allowance for fees and bank charges incurred by us as a result) if paying at the PHIA Operating Company's offices;
  - (d) approved credit card (including a reasonable allowance for fees and bank charges incurred by us as a result) if paying by telephone or at the PHIA Operating Company's offices, or
  - (e) any other method approved by us.

### **7.4 Variation of Aviation Charges**

- (1) We may vary any of the Aviation Charges or their application at any time.

- (2) If we intend to vary any of the Aviation Charges:
  - (a) where it is practical to do so, we will use our best endeavours to consult with the relevant major users of the Airport at least 30 Business Days prior to publication on the Website, and before we vary the Aviation Charges;
  - (b) however we will notify you at least 20 Business Days before any variation becomes effective; and
  - (c) such amendments to Aviation Charges will be published on the Website.

## **7.5 Aviation Infrastructure and Facilities Investments**

You acknowledge that we are responsible for all Aviation Infrastructure and Facilities Investment decisions at the Airport, as the operator of our Airport. If we decide to make a major Aviation Infrastructure and Facilities Investment, we may increase the Aviation Charges. However, before we make a final decision on any Aviation Infrastructure and Facilities Investment, we agree to use our best endeavours to consult with our Major Users about any necessary related increases to Aviation Charges at least 30 Business Days prior to implementing such changes.

## **8 Government Mandated Charges**

### **8.1 Payment of Government Mandated Charges**

You must pay us Government Mandated Charges applicable for us providing the Government Mandated Services to you.

### **8.2 Government Mandated Services**

We administer or procure by a third party the administration of the Government Mandated Services for the provision of safety and security at our Airport, which may include (but are not limited to) the following services:

- (1) terminal passenger screening;
- (2) checked baggage screening;
- (3) airside perimeter patrolling;
- (4) terminal front of house traffic and security management;
- (5) quarantine;
- (6) other services required by the Commonwealth Government, the Western Australian Government or other lawful authority (including the Department) from time to time and any additional security measures we are required to take or which we undertake through third parties and which may include the incurrence of capital expenditure (allowing a reasonable return on capital investment) to provide such services and which are provided by us to you at our Airport from time to time;
- (7) any hiring of equipment required for providing the Government Mandated Services; and
- (8) any operational and administrative costs incurred by the Airport to provide the Government Mandated Services either directly, or on a contract management basis.

### **8.3 Changes to Government Mandated Charges**

We will notify you of any changes to the Government Mandated Charges in the same way as identified at Condition 7.4.

### **8.4 Recovery of Government Mandated Charges**

The Government Mandated Charges are payable by you annually on a pass-through basis, which we will review every 12 months. Any under or over recovery of Government Mandated Costs in any particular year will be adjusted in the following year by increasing or reducing Government Mandated Charges payable for the following year. The payment provisions in Conditions 7.3(2), (3) and (4) apply to this Condition in relation to the payment of Government Mandated Charges.

### **8.5 Management of Government Mandated Charges and Government Mandated Services**

We will use our best endeavours to manage the Government Mandated Charges and provide the Government Mandated Services including where they are delivered by third parties in the most economically efficient and cost-effective manner, having regard to best practice in the industry and the service levels mandated by the Commonwealth Government.

## **9 Failure to pay Government Mandated Charges or Aviation Charges**

### **9.1 Failure to pay Charges when due**

- (1) If you do not pay the amount you owe on time, you must pay interest on the amount (when we ask for that interest or at the times we tell you it is payable) from and including the day the amount becomes payable to and including the day you pay the amount and all interest accrued on it.
- (2) Interest is calculated daily at the Interest Rate.
- (3) If you notify us in writing that you dispute any charge shown in an invoice within 7 days of receiving that invoice, and in our reasonable opinion you have grounds to dispute it, then the provisions of Condition 26 will apply.
- (4) In the event of a dispute between you and us, you must pay all Charges in full pending resolution of any such dispute.
- (5) If following the resolution of a dispute regarding any Government Mandated Charges or Aviation Charges:
  - (a) it is found that you have made an overpayment of Charges, then we will credit your next invoice from us by the amount of overpayment of Charges; or
  - (b) it is found that you are required to pay further Charges to us in addition to the disputed invoice amount (not limited to the payment of any of our costs in respect to your dispute), then you must pay those further Charges to us immediately following the resolution of the dispute.
- (6) Subject to Condition 9.1(3), if you do not pay us an amount you owe us including Aviation Charges in accordance with Schedule 2 and Government Mandated Charges within 15 Business Days after it is due for payment, we may:
  - (a) refuse to allow any or all Aircraft owned or operated by you to use our Facilities and Services at the Airport; and/or



- (b) use reasonable means to detain and have a lien over any of your Aircraft and any other ancillary equipment used by your aircraft operations (whether directly involved in the accrual of the debt or otherwise) until you have paid all due Charges and interest provided that:
  - (i) we have first sought to negotiate in good faith any dispute about charges in accordance with Condition 9.1(3);
  - (ii) we have first sought to recover any outstanding Charges from you; and
  - (iii) we have given you 14 days' notice in writing either during or after the 21 day period that we intend to do this.

The right of detention and/or lien is not lost because the relevant Aircraft has departed from the Airport. The right of detention and/or lien continues and is exercisable by us at any time when the relevant Aircraft is at the Airport.

- (7) Unless we give you express written consent, you are not allowed to make any set-off against or deduction from the Charges for using our Facilities and Services.
- (8) We may take any other action against you that the law allows to recover anything you owe us. This includes issuing you with a statutory demand for any debt you owe us which is due and payable for 21 days or more. We may recover from you reasonable costs of recovering any unpaid Charges including, without limitation, any reasonable legal fees.
- (9) We hold the Aircraft Owner and Aircraft Operator jointly and severally liable for the payment of all Charges, interest and costs incurred by an Aircraft Operator using the Airport's Facilities & Services.
- (10) You must notify us immediately if you become aware that you will not or might not be able to pay a Government Mandated Charge or an Aviation Charge by the due date.
- (11) Neither your giving, nor our receipt, of that notice, affects our rights under these Conditions, and you will remain liable for the payment of the Government Mandated Charges and Aviation Charges.
- (12) You will also be liable for any additional costs we incur in recovering any unpaid Charges.
- (13) You acknowledge that we have the rights conferred by this Condition 9.1, and submit to the obligations to pay under this Condition.
- (14) You acknowledge and agree that if we detain your aircraft or take any other action as a result of the non-payment of Government Mandated Charges and Aviation Charges, all costs incurred by us become payable by you, including any costs for security incurred during any detention period.
- (15) These Conditions do not limit any other action lawfully available to us to recover anything you owe us.
- (16) Our rights under these Conditions are not lost, or deemed to be waived, where any of your aircraft are removed from the Airport.

## 9.2 Bank Guarantee or Bond

- (1) If:
  - (a) on two or more occasions you have failed to pay Government Mandated Charges, and/or Aviation Charges (which are not subject to a reasonable dispute) by the date specified within the invoice rendered; or
  - (b) we have at any time commenced recovery action against you;

we may require that you provide us with a Bank Guarantee or Bond in accordance with this Condition 9.2.

- (2) Where we have requested a Bank Guarantee or Bond from you and it is not provided, we may:
  - (a) refuse to allow any or all of your aircraft to use the Airport;
  - (b) refuse you or any entity associated with you access any part of the Airport; and
  - (c) report your conduct to such credit reference organisations as we deem to be appropriate;

until you provide us with a suitable Bank Guarantee or Bond.

## 10 Security

- (1) If we request a Bank Guarantee or Bond from you as security for your use of our Facilities and Services, you must provide that Bank Guarantee or Bond within 20 Business Days of our request.
- (2) The amount of the Bank Guarantee or Bond will be the greater of:
  - (a) \$10,000.00;
  - (b) the aggregate of the previous three months Charges payable by you to us; or
  - (c) any other amount we consider appropriate.
- (3) We may on 20 Business Days written notice require you to increase the amount of the Bank Guarantee or Bond if:
  - (a) you fail to pay any Charges; or
  - (b) you fail to comply with any of these conditions.
- (4) You acknowledge that if you fail to pay any Charges, or cause any damage to the Facilities and Services or anything else at the Airport we may draw upon the Bank Guarantee or Bond without notice to you to compensate us for any loss or damage sustained by us.
- (5) If we draw upon the Bank Guarantee or Bond, you must immediately give us a replacement Bank Guarantee or Bond for the amount required under this Condition 10. You may be prohibited from using the Facilities and Services until a replacement is provided.

## **11 Moving aircraft**

- (1) We may at any time, acting reasonably, direct you to:
  - (a) move any aircraft to another position at the Airport; or
  - (b) remove an aircraft from the Airport at your cost, and within a specified time.
- (2) If you do not comply with our request within the specified time, we may move or remove the aircraft and:
  - (a) you must pay all of our reasonable costs of having the aircraft moved or removed; and
  - (b) you are liable for and indemnify us, our officers, employees and agents against any personal injury, death, loss or damage caused or contributed to by your failure to comply with our order, including any loss or damage caused to any property in the detainment, or movement of the aircraft (unless any loss or damage is caused by our negligence);

provided that we first make all reasonable attempts to contact you before moving or removing your aircraft.
- (3) These Conditions are subject to whatever licence or sublease you have been granted by us, in particular regarding the parking of aircraft.

## **12 Sale of aircraft**

- (1) If any Aviation Charge or Government Mandated Charge is not paid within 60 Business Days of the date of the invoice for that Charge, we may sell your aircraft, and/or any other item of your property at the Airport, to recover any amount outstanding including interest, costs and administration fees.
- (2) We are entitled to nominate the method by which we will sell the Aircraft or other detained property, in accordance with Schedule 4, and by using the Facilities and Services, you agree that we are entitled to do so.
- (3) We will not be liable for any loss, liability or exposure you incur arising out of:
  - (a) anything we do or do not do in exercising our right of sale under these Conditions, including not obtaining a market price; and
  - (b) our application of the sale proceeds.

## **13 Facilities and services unavailable**

- (1) We will endeavour to keep our Facilities and Services and Government Mandated Services at the Airport available for use, however you acknowledge that they may be temporarily unavailable wholly or partly from time to time.
- (2) You acknowledge that if the Government Mandated Services are not available, you may be limited in or prevented from operating at the Airport.
- (3) If we are aware that the Facilities and Services will become partly or wholly unavailable we will use our best endeavours to publish details of which Facilities and Services will be unavailable approximately 20 Business Days prior to this occurring. This is subject to Conditions 6.1 and 24.

- (4) Notwithstanding condition 13(3), we may at any time on short notice declare that any of our Facilities and Services are wholly or partly unavailable for use due to safety or operational requirements. We will use our best endeavours to notify you of any unavailability. It is your responsibility to arrange use of alternate facilities or services required by your operations for such period that the Facilities and Services are unavailable.

## **14 Services we do not provide**

- (1) We do not provide:
- (a) aircraft, building, motor vehicle or other security services (other than those detailed in Condition 15);
  - (b) air traffic control;
  - (c) rescue and firefighting;
  - (d) en-route services;
  - (e) meteorological services;
  - (f) hangar facilities other than on commercial terms;
  - (g) quarantine, customs or immigration services;
  - (h) mechanical repair/maintenance services;
  - (i) ground handling, re-fuelling and/or other apron services;
  - (j) navigation aids;
  - (k) engineering services; and
  - (l) environmental clean-up services.
- (2) Our Charges do not include fees for any services listed in Condition 14(1), or fees for things we provide outside the scope of these Conditions.

## **15 Airport security**

### **15.1 We are responsible for the security at our Airport**

We are responsible for Airport security arrangements and emergency response activities under the *Aviation Transport Security Act 2004* (Cth), the Aviation Transport Security Regulations, any Department instruments or directions, and additional security measures which may be imposed upon us from time to time. The Department is the regulatory authority for our Airport and may impose on us certain security requirements which you must comply with.

### **15.2 Our aviation security programmes**

The Transport Security Program outlines our requirements regarding our Airport' security. You must comply with the Transport Security Program.

### 15.3 **Aviation Security Identification Card (ASIC)**

You and your employees, agents and contractors must have for display an ASIC valid for the Airport to be permitted to access and use restricted areas, including the Security Restricted Area, and controlled areas of our Airport. An ASIC is not valid if it is not displayed as required by the Air Transport Security Regulations, visible above the waist on the front of the person, and it must be produced for inspection by us or any other lawful authority at any time.

### 15.4 **ASIC application security checks**

- (1) Authorised third party issuing authorities undertake this function and you and your employees, agents and contractors acknowledge that they are able to conduct a detailed police service and law enforcement check on all applicants, which will include a check on the applicant's criminal and other history (including criminal history, politically motivated violence and immigration status checks) to determine their suitability to possess an ASIC.
- (2) More information about this, and about the applicant's consent for their security checks, is on their ASIC application forms. You must pay our reasonable fees for an ASIC on making the application.

### 15.5 **Access to Airside security restricted areas**

- (1) Where an Airside area has been established in relation to operational areas of the Airport pursuant to the *Aviation Transport Security Act 2004* (Cth), access to the Airside area is restricted to those persons:
  - (a) having authority to access the Airside area;
  - (b) holding a valid ASIC; and
  - (c) having lawful requirement to access Airside security restricted areas.
- (2) It is the responsibility of the Aircraft Operator or Aircraft Owner to ensure all persons using the Aircraft and Facilities and Services are compliant with the relevant security Laws including, without limitation, the *Aviation Transport Security Act 2004* (Cth).
- (3) Persons without an ASIC must obtain a VIC from us, or a participating organisation, and be accompanied at all times by an ASIC holder.
- (4) Passengers on Aircraft are not required to hold a VIC if accompanied to and from the Aircraft by:
  - (a) a pilot of that Aircraft; or
  - (b) another authorised person holding a valid ASIC.
- (5) You are not permitted to operate a vehicle Airside or operate a piece of mobile equipment Airside unless and until:
  - (a) you hold a current ASIC or VIC; and
  - (b) you hold all appropriate approvals and permits for the use of vehicles Airside as required by us from time to time.

#### **15.6 ASIC conditions of use**

If an authorised issuing authority, issue you or your employees, agents and contractors with an ASIC for use at the Airport, the ASIC is issued on their ASIC issuing conditions on the ASIC application form, which is available from our office. The ASIC remains the property of the issuing authority at all times and must be surrendered to the issuing authority on demand or when your employment ceases or when it is no longer required.

#### **15.7 Screening Authority for the Airport**

We are the authorised screening authority for passenger and checked baggage screening at the Airport. The requirements for screening are prescribed by The Department. You and we must comply with these screening requirements.

#### **15.8 Airport Security Committee**

We have an Airport Security Committee which meets as provided in our Transport Security Program. If you are a Major User of the Airport, you must appoint someone to attend and represent your interests on this committee.

#### **15.9 Airport Exercises and training**

We conduct regular Airport Exercises which include training for you and your employees, agents and contractors on a variety of Airport related activities and procedures (including security and emergency procedures). We will give you reasonable notice before these Airport Exercises and training will be conducted. We strongly recommend you send a representative and any new employees to these Airport Exercises. You and your employees must participate in these Airport Exercises if we ask you to.

### **16 Aviation safety**

#### **16.1 We are responsible for aviation safety at our Airport**

- (1) In common with the operators of aircraft and other users of our Airport, we are responsible for aviation safety arrangements and emergency response under the *Civil Aviation Act 1988* (Cth), the Civil Aviation Safety Regulations, any instruments or directions of authorities responsible for aviation safety, and additional safety measures which may be imposed upon us from time to time.
- (2) You must comply with any obligations or directions imposed on us or the Airport by CASA.

#### **16.2 Our aviation safety program**

The Aerodrome Manual and associated documentation outlines our requirements regarding aviation safety at our Airport. You must comply with the Aerodrome Manual and associated documentation.

#### **16.3 Drug and Alcohol Management Plan (DAMP)**

- (1) The Civil Aviation Safety Regulations require all organisations with employees or contractors performing safety-sensitive aviation activities develop and implement a DAMP.
- (2) We have prepared and implemented a DAMP for our Airport.

- (3) You must determine whether you are required to have a DAMP, and if so, you must develop and implement a DAMP in accordance with the Civil Aviation Safety Regulations.
- (4) You and your employees, agents and contractors must comply with both our DAMP and the DAMP you have prepared and implemented. It is your responsibility to be familiar with which DAMP applies to you and your employees and contractors and to ensure compliance with that DAMP.

#### 16.4 Authority to drive airside

- (1) Driving airside is governed by our Airside Vehicle Control Handbook (**Handbook**) and associated documents. You must comply with the Handbook and associated documents.
- (2) You and your employees, agents and contractors must have obtained written authority from us to drive airside (**ADA**) to operate vehicles on the airside at our Airport.
- (3) You acknowledge that application for an ADA involves successful testing against the statutory and local rules of operating airside, and the ability to demonstrate licence to drive on public roads.
- (4) We reserve the right to introduce a registration system for vehicles operated airside, for security, operational or other reasons.
- (5) More information about these matters is available when you apply for an ADA or registration. You must pay our fees for an ADA or registration upon making the application.

#### 16.5 Airport operations committee

- (1) The Airport Emergency Committee which meets in relation to Airport security operations at the times prescribed by the Aerodrome Manual. This is a regulatory requirement. This committee assesses, tests, reviews and amends our Aerodrome Emergency Plan as required.
- (2) If you are a Major User of the Airport, you must appoint someone to attend and represent your interests on these committees.

### 17 Use of Airport Facilities and Services after hours

17.1 Subject to this Condition 17, you must not use any of the Facilities and Services at the Airport outside of the Airport's published operating hours unless:

- (1) you have our prior written permission to do so; and
- (2) arrangements have been put in place to facilitate your use of the Airport Facilities and Services outside of the Airport's published operating hours.

17.2 You must use your best endeavours to notify as soon as practicable that you require use of the Airport Facilities and Services outside of the Airport's published operating hours (for example, the late arrival of a RPT Operation flight).

17.3 You acknowledge that we incur additional costs, including employment and other costs, in keeping the Airport open beyond the published operating hours where you operate outside of these times and that we are entitled to levy the After Hours Charge on your use of the Airport Facilities and Services.

- 17.4 The After Hours Charge is payable by you:
- (1) in addition to any Aviation Charges and Government Mandated Services Charges which may be applicable;
  - (2) in the same manner as if a reference to “Aviation Charges” in clause 7 was a reference to the “After Hours Charge”; and
  - (3) in hourly blocks, notwithstanding that the Airport was only kept open for part of an hour.
- 17.5 We will not charge the After Hours Charge if the Airport only remains open for an additional 30 minutes which occurs either immediately before or immediately after the published operating hours. However, use of the Airport before or after this 30 minute period will be charged for at least the first full hourly After Hours Charge.

## **18 Airport closed or services unavailable**

- 18.1 We will endeavour to keep our Facilities and Services at the Airport available for use, however their use may be unavailable wholly or partly for operational purposes, maintenance, or any new developments or events beyond our reasonable control.
- 18.2 If the Facilities and Services become partly or wholly unavailable we will use our best endeavours to publish details of which Facilities and Services will be unavailable approximately 30 days prior to this occurring. This is subject to Conditions 3(3), 23 and 24.
- 18.3 We may at any time on short notice declare that any of our Facilities and Services are wholly or partly unavailable for use due to safety or operational requirements. We will use our best endeavours to notify you of any unavailability. It is your responsibility to arrange use of alternate facilities or services.

## **19 Certain commercial activities prohibited**

- 19.1 You must not engage in the supply of goods or services at the Airport except where the supply:
- (1) relates to air transport services or services relating to Aircraft by, or at the request or direction of, the Aircraft Operator or Aircraft Owner; or
  - (2) is authorised in writing by us (including pursuant to a lease, licence or concessionaire agreement where we authorise you to conduct a business for the supply of goods or services).

## **20 Environment Policy**

You must comply with our Airport Environment Policies, the provisions of State and Commonwealth Acts with respect to environmental protection, and any other Legislation and regulations of application to our Airport imposed by the Commonwealth or Western Australian Governments in relation to environmental protection.

## **21 Building or construction works in restricted or controlled areas**

- (1) You must not undertake any construction or modifications to buildings or other structures on our Airport without obtaining our prior written consent from us.



- (2) If required, before you undertake any construction or modifications to buildings or other structures on our Airport which are on or affect Security Restricted Areas, you must first have security clearance from the Department, us and, if applicable, Airservices Australia. Where reasonably necessary, we may ask that you have security personnel supervising any building or construction work in restricted or controlled areas at all times.
- (3) In addition, we, the Department or any lawful authority may supervise your building or construction work in restricted or controlled areas of our Airport. We may invoice you for the reasonable costs and expenses if we require security personnel to supervise your building or construction work (on a full recovery basis). In performing any building work on the Airport, you must also comply with the State and Local Government building Regulations as amended from time to time. If there is a failure in security or a breach of our security requirements we may take any reasonable action necessary to resecure your area at your expense.

## **22 Insurance**

- (1) You must at all times maintain a policy of insurance for at least \$20,000,000 (or such other amount as we notify from time to time) insuring against all claims which may be brought against either you or us for bodily injury (including death) and/or damage to property whether or not arising out of the use of any aircraft by you or any other party you authorise to use such aircraft. The insurance policy must note our, and our Financier's interest.
- (2) You must whenever requested by us produce evidence of the currency of the insurance policy required by this Condition 22.
- (3) We may deny your staff and aircraft the use of the Airport or the Facilities and Services until such insurance is in place.
- (4) The sum insured as stated in Condition 22(1), or as otherwise notified is not the limit of your liability but merely a reasonable minimum amount of insurance that must be maintained. The insured amount must be sufficient to cover all risk of loss of or damage to any property, equipment or other materials used by you in the conduct of the business.

## **23 Release and indemnity**

### **23.1 You indemnify us**

You are liable for and you must indemnify us against liability or loss arising from, and any costs incurred in connection with:

- (1) a breach of these Conditions by you, including the loss or damage that results from us exercising our right to terminate these Conditions, or our termination of your use of our Airport; or
- (2) damage, loss (to person or property), injury or death caused or contributed to by your act, omission, or default by you or your employees or agents; or
- (3) damage, loss, injury or death caused or contributed to by you bringing onto, or storing at, our Airport any dangerous or contaminating substances; or

- (4) us doing anything which you are required to do under these Conditions but have not done; or
- (5) the overflow or leakage of liquids into or from any area at our Airport that you use or fire on or from any area at our Airport that you use; or
- (6) loss or damage (to person or property) caused by you or your employee's or agent's use of our Airport; or
- (7) our exercise of the right to detain, move or remove your aircraft; or
- (8) any claim by third parties arising out of the personal injury or death of any person, or damage to property caused by your use of our Airport,

unless caused by our negligent act.

### **23.2 Your risk**

You use our Airport at your own risk.

### **23.3 You release us**

You release us from, and agree that we are not liable for, any liability or loss arising from:

- (1) damage, loss (to person or property), injury or death; or
- (2) anything we are permitted or required to do under these Conditions; in the absence of any negligent act on our part.

### **23.4 Survival of indemnities**

Each indemnity in these Conditions is a continuing obligation, separate and independent from the other obligations, and shall survive the termination of these Conditions.

### **23.5 Enforcement of indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by these Conditions.

## **24 Exclusion of warranties and conditions**

- (1) We do not make any representation or warranty in connection with the use of the Airport or the Facilities and Services and we exclude all implied warranties and conditions that can be excluded.
- (2) If a warranty or condition is implied under any Legislation in connection with any part of the Facilities and Services, and it can be excluded, we exclude it and if we cannot exclude it, then our liability for breach of that warranty or condition is limited to:
  - (a) the supplying of the Facilities and Services again; or
  - (b) the payment of the cost of having the Facilities and Services supplied again.

## **25 Statistical information**

### **25.1 Monthly summary reports**

Within 5 Business Days after the end of each month, you agree to provide to and any person nominated by us with a monthly summary (by flight) of the information provided under these Conditions, particularly in accordance with Condition 6.1(3). This information will be used to calculate the Aviation Charges.

### **25.2 Why we need statistical information**

The statistical information you provide is extremely important to us, not just for the purposes of calculating Aviation Charges, but also to assist us monitor growth in activity at our Airport, efficiently manage our Airport and to assist future planning for our Airport, to ensure your future needs are catered for.

## **26 Dispute resolution**

### **26.1 Procedure**

If a party considers that a dispute has arisen in connection with these Conditions (**Issue**), then the parties must follow the procedure set out in this Condition 26 to resolve the Issue. In particular before commencing court proceedings the parties must first comply with Conditions 26.2 to 26.8.

### **26.2 Notice of an Issue**

If a party considers there is an Issue, that party must give the other party notice of that Issue. The parties must then attempt to resolve the Issue.

### **26.3 Authorised Officers to meet**

If the Issue remains unresolved for 10 Business Days after a party receives the other party's notice of the Issue, then an Authorised officer from each party must meet at least two times at our office (or at another agreed location) to discuss and attempt to resolve the Issue in good faith. The meetings must take place between the Authorised Officers within 10 Business Days following the issue being referred to the Authorised Officers.

### **26.4 Failure to agree**

If the Issue remains unresolved for 30 Business Days after the Issue was referred to the Authorised officers, or such longer period as the parties may agree, either party may refer the Issue to their respective Chief Executive Officers / General Manager or person in charge.

### **26.5 Referral to Chief Executive Officers**

Each party's Chief Executive Officer/General Manager or their nominee (**CEOs or GMs**) must then meet at our offices (or at another agreed location) within 10 Business Days of the Issue being referred to the CEOs/ GMs to discuss the Issue in good faith with a view to resolving the Issue.

### **26.6 Mediation**

If the issue remains unresolved for 60 Business Days after the parties' CEOs/GMs have met (or should have met) in accordance with Condition 26.5, then the parties agree that the issue will be referred to mediation, which mediation will be conducted in accordance with the then current rules of The Institute of Arbitrators and Mediators Australia. The mediation will take

place in Port Hedland, Western Australia and each party will bear their own costs and expenses in respect to the mediation despite the outcome (including legal costs). However, despite any provision in the rules of The Institute of Arbitrators and Mediators Australia, a decision of the arbitrator or mediator will not in any way be binding on either party at any time unless it is agreed to be binding by the parties, and if no agreement is reached between the parties following mediation then they can subsequently institute legal proceedings in regard to the Issue, if required.

#### **26.7 Aviation Charges and Government Mandated Charges**

If the Issue relates to the calculation and payment of Aviation Charges or Government Mandated Charges, we agree that you do not have to pay the amount of any Aviation Charges or Government Mandated Charges that are the subject of a bona fide dispute, unless and until and from such time as the Issue is resolved in accordance with this Condition. However, you must still pay any amount of Aviation Charges or Government Mandated Charges which are not in dispute by their due date for payment.

#### **26.8 Legal proceedings**

Nothing in this Condition 26 prevents either party from commencing legal proceedings for urgent interlocutory or temporary relief.

### **27 Confidentiality**

- (1) Each party acknowledges that all Confidential Information of the other party is and will be the sole and exclusive property of that other party.
- (2) Each party undertakes to the other to keep confidential each other's Confidential Information. Both parties must use their best efforts to prevent third parties from gaining access to each other's Confidential Information, other than as permitted under these Conditions. To this end, each party must not, without the other party's prior written consent:
  - (a) disclose or in any way communicate to any other person all or any of the other party's Confidential Information except as permitted by these Conditions; or
  - (b) permit unauthorised persons to have access to places where the other party's Confidential Information is displayed, reproduced or stored; or
  - (c) make or assist any person to make any unauthorised use of the other party's Confidential Information and must take all reasonable steps (including obtaining confidentiality undertakings from officers, employees, agents and contractors who have or may have access to the other party's Confidential Information) to ensure that the other party's Confidential Information is not disclosed to any other person by any of the officers, servants, agents, contractors or sub-contractors of either party.
- (3) Subject to Condition 27(4), either party may disclose the other party's Confidential Information to its employees, officers, agents and contractors in the course of their employment on a need to know basis or to its advisers in relation to its rights under these Conditions.

- (4) Nothing in these Conditions prohibits the use or disclosure of any Confidential Information to the extent that:
  - (a) the Confidential Information is lawfully in the possession of the recipient of the information through sources other than the party who disclosed the Confidential Information; or
  - (b) it is required by law or the rules of a stock exchange; or
  - (c) it is strictly and necessarily required in connection with legal proceedings relating
  - (d) to these Conditions; or
  - (e) the Confidential Information is generally and publicly available other than as a result of a breach of confidence by the person receiving the information.
- (5) Both parties must ensure their respective employees, officers, contractors, agents and all other persons under their control or direction will comply with obligations similar to the obligations imposed on it under this Condition 27.
- (6) If either party's servants, officers, agents or contractors breach the confidentiality obligations contained in these Conditions it must immediately notify the other party of this in writing and, subject to this Condition, indemnify the other party for any direct loss and damage caused by such breach.
- (7) Each party acknowledges that a breach of this Condition 27 may cause the other party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, each party may seek and obtain injunctive relief against such a breach or threatened breach.
- (8) The obligations under this Condition 27 survive expiry or termination of these Conditions.
- (9) Notwithstanding any other provision in these Conditions, we are entitled to disclose the following information:
  - (a) annual total passenger numbers;
  - (b) monthly total passenger numbers; and
  - (c) any information required for us assessing and improving our business;to any person or government agency for the purpose of a tender, a renegotiation of contracts, or such other purpose deemed appropriate by us.

## **28 Goods and services tax (GST)**

- (1) Both parties agree and acknowledge that any consideration payable under these Conditions does not include GST.
- (2) Both parties agree that in the case of a Supply in connection with these Conditions which is a taxable Supply within the meaning of the GST Act, then any and all consideration payable to a party for that Supply will be increased by an amount equal to the GST payable on the Supply, calculated in accordance with the GST Act.

- (3) The party giving consideration for the Supply must pay the supplier an amount equal to any increase in consideration payable in respect of any taxable Supply following receipt of a Tax Invoice in relation to the Supply.
- (4) Any expression used that is also used in the GST Act shall have for the purposes of these Conditions the meaning used in or attributed to that expression by the GST Act.

## 29 Privacy and data protection

- (1) This Condition will only apply to Personal Information we collect, use and disclose about individuals. It does not apply to information collected, used and disclosed about corporations.
- (2) We shall collect Personal Information from you in relation to your use of the Airport and our Facilities and Services, and in accordance with the Aviation Transport Security Act, Civil Aviation Act and the Competition and Consumer Act 2010:
  - (a) for the purposes of the administration and operation of the Airport and for enforcement of these Conditions; and
  - (b) for the purposes of disclosure to a third party for their use in the case of a sale, transfer or assignment of the whole, or part, of our business or undertaking or the whole or part of Airport assets and facilities; and
  - (c) for the purpose of research by us or authorised third parties, statistical analysis by us, and for the purpose of marketing the Airport or other services offered by us to tenants, occupiers and users of our Airport.
- (3) By using our Facilities and Services, you consent to us using and disclosing your Personal Information for the purposes set out in Condition 29(2).
- (4) We shall ensure for the purposes of Conditions 29(2)(b) and 29(2)(c) any Personal Information disclosed will be de-identified, and disclosed as part of general information only. Such information will therefore not be identifiable as your Personal Information unless agreed otherwise by you.
- (5) In our collection, use and disclosure of your Personal Information we will:
  - (a) comply with the provisions of the *Privacy Act 1988*; and
  - (b) take all reasonable steps to ensure that your Personal Information is protected from unauthorised use and disclosure.
- (6) Subject to the Privacy Act, your Personal Information may be accessed by you upon reasonable notice to us and upon the payment of our reasonable expenses relating to your access (e.g. photocopying charges). No application fee for access will be charged.
- (7) You must ensure that all your Personal Information provided to us is accurate, complete and up to date.
- (8) If you fail to provide to us with your Personal Information required by us, or you provide incomplete Personal Information, or fail to reasonably update our record of your Personal Information, we will send you a notice requesting the delivery of the Personal Information. Failure to deliver in accordance with the notice shall be an event of default under these Conditions and Condition 5.2 applies.

- (9) For further information in relation to our handling of your Personal Information, please see our Website.

### **30 Governing law**

These Conditions are governed by and construed in accordance with the relevant laws of both Western Australia and the Commonwealth of Australia.

### **31 User personnel**

- (1) We may require you to remove any staff members working at the airport in the event we determine their presence is not in the best interest of the Airport.
- (2) We must give you written notice of our requirement under Condition 31(1).
- (3) Following the receipt of a notice given under Condition 31(2), and unless more immediate action is required by us or legislation and regulations, you have 48 hours in which to investigate the matter and discuss it with us. This time period may be extended by us at our reasonable discretion.
- (4) This Condition does not entitle us to require you to terminate the employment or contract with any person, but we may restrict that person's access to the Airport.

### **32 Common User Conditions**

If you use the Common User Facilities at any of our Airport, you must comply with the Common User Conditions in Schedule 6.

## Schedule 1 – Definitions

In these Conditions:

- (1) **ABN** means Australian Business Number in accordance with the definition located at s41 of the *New Tax System (Australian Business Number) Act 1999*;
- (2) **Aerobridge** means the aerobridge or aerobridges located at the Airport Terminals and used by you for Embarking Passengers and Disembarking Passengers;
- (3) **Aerodrome Emergency Plan** means the document detailing response agencies and stakeholders respond in the event of an aircraft accident or major aviation or security incident at the Airport, and the planning and administration of such response. Same is located at the Airport and available to users of the Airport on request;
- (4) **Aerodrome Emergency Procedures** means the document detailing those procedures in place from time to time for Airport staff to follow in the event of an aircraft accident or major aviation or security incident arising at the Airport, and being available to users of the Airport on request;
- (5) **Aerodrome Manual** means the manual detailing how the requirements of the *Civil Aviation Act 1988* and Civil Aviation Safety Regulation and good aviation safety management are to be satisfied. Same is located at our office, and available to users of the Airport on request;
- (6) **After Hours Charge** means the hourly rate charged for the use of the Facilities and Services outside the Airport's published operating hours as set out in Schedule 3;
- (7) **Air Operator's Certificate** means the certificate of that name issued under Division 2 of Part 111 of the *Civil Aviation Act 1988*;
- (8) **Air Traffic Control** means any service provided by air traffic control which includes a traffic advisory service, traffic avoidance service, and traffic information;
- (9) **Aircraft** means and includes fixed wing aircraft, helicopters, balloons powered or un-powered and their parts and accessories, equipment and stores;
- (10) **Aircraft Operator** means the person whose name appears on the Aircraft Register as the operator of the Aircraft, the holder of the Certificate of Registration with respect to the Aircraft or any person who, with the authority of the holder of the Certificate of Registration for the Aircraft and the written acceptance of PHIA Operating Company, operates that Aircraft when it arrives at or departs from the Airport as the case may be;
- (11) **Aircraft Owner** means the person named on the Certificate of Registration as being the owner of the Aircraft;
- (12) **Aircraft Parking Charges (APC)** means parking charges not already covered by the General Landing Charges, as referred to in Schedule 2;
- (13) **Aircraft Register** means the register of Australian Aircraft established pursuant to Regulation 8 of the *Civil Aviation Regulations 1988* (Cth);
- (14) **Airline Operators Committee** means the committee of airline operators convened to operate from the Airport;
- (15) **Airport** means the Port Hedland Airport in Western Australia, and includes all hangars, other buildings, roads and other areas and the Facilities and Services within the boundaries of the Airport;



- (16) **Airport Emergency Committee** means as prescribed by the Aerodrome Manual, and includes representatives of us, the Australian Federal Police, the Western Australian Police, Fire and Emergency Services, AirServices Australia and such other Western Australian emergency services personnel;
- (17) **Airport Environmental Strategy** means the strategy prepared by us, and approved by the Minister, from time to time in relation to the management of the environment;
- (18) **Airport Exercises** are mandatory exercises required to be done by us from time to time to amongst other things test the ability of us, You, and any other parties to react to any emergency situation on the Airport;
- (19) **Airport Land** means the land set out in Schedule 7;:
- (20) **Airport Landing Fee (ALF)** means the charges for the use of the Airport's runways, taxiways and apron areas, as referred to in Schedule 2;
- (21) **Airport Security Committee** means the high level committee convened for the purposes of monitoring, reviewing and guiding Airport aviation security;
- (22) **Airport Terminal** means those buildings at the Airport known as the airport terminal buildings;
- (23) **Airside** means the movement area of an aerodrome, adjacent terrain and buildings or portions thereof, as determined in accordance with the *Aviation Transport Security Act 2004* (Cth) and other relevant laws;
- (24) **ASIC** means Aviation Security Identification Card;
- (25) **Authorised Officer** means an individual with the appropriate authorisation from a party to bind that party to agreed obligations;
- (26) **Aviation Charges** means all of those Charges listed in Schedule 2 and any other Charges prescribed by us from time to time which are payable by you in consideration for your use of the Facilities and Services. As at the date of these Conditions the Aviation Charges payable are set out at Schedule 2;
- (27) **Aviation Infrastructure and Facilities Investments** means those projects at our Airport that we invest in to expand or improve Aviation Services including, but not limited to:
- (a) runways, taxiways and apron; or
  - (b) terminal and other buildings; or
  - (c) new developments works for new aircraft and major new ground transport infrastructure;
- (28) **Aviation Services** means those aircraft movement facilities and activities and passenger processing facilities and activities set out in Schedule 5 but excludes:
- (a) services provided by us to commercial ground transport operators, fuel companies and fuel suppliers; and
  - (b) those services set out in Condition 2.4;

- (29) **BHS** means:
- (a) the physical baggage handling system which transports baggage from Check-in Counters along conveyor belts to the make-up conveyor(s) (as more particularly described in Schedule 6) but does not include the transport of baggage from the make-up conveyor(s) to aircraft; and
  - (b) where the context permits, the physical baggage handling system which transports baggage on baggage breakdown/claims conveyors to arrivals areas for collection by passengers, but does not include the transport of baggage from aircraft to unloading onto the claims conveyor(s);
- (30) **Bank Guarantee** means an unconditional and irrevocable undertaking by an Australian bank on terms acceptable to us to pay the amount of the bank guarantee on demand. Bond means monetary security to be provided in accordance with Condition 10;
- (31) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Port Hedland;
- (32) **CASA** means the Civil Aviation Safety Authority;
- (33) **Certificate of Registration** means for an aircraft the certificate of registration issued by CASA pursuant to the Civil Aviation Regulations 1988 (Cth);
- (34) **Charges** means amounts payable pursuant to these Conditions;
- (35) **Charter Operations** means any charter operations for transporting people and or goods which are not available to the general public without prior arrangement;
- (36) **Common Traffic Advisory Frequency** means an air traffic frequency at which a mandatory aircraft radio call is made to pilots of other adjacent aircraft in uncontrolled airspace advising of the pilot's intentions;
- (37) **Common User Charges** means the charges raised for the use of the common user check-in facilities as detailed in Schedule 2;
- (38) **Common User Conditions** means the conditions in Schedule 6;
- (39) **Common User Facilities** includes the BHS, the Counters, the Departure and Arrival Lounge(s), the FIDS, Our Equipment, and the PA System, which Common User Facilities are provided by us;
- (40) **Conditions** means as defined in Condition 2;
- (41) **Confidential Information** means all information relating to or developed in connection with or in support of either party's business disclosed or otherwise provided by one party to the other or otherwise obtained by either party which:
- (a) is not trivial in character; or
  - (b) is not generally available to the public; or
  - (c) if generally available to the public, so became available to the public as a result of an unauthorised disclosure or otherwise by reason of a breach of confidence on the part of the other party;
- (42) **Counter** means those counters in the Airport Terminal used for but not limited to the Check-in Service, Sales and Boarding for use by your customers;

- (43) **Counter Equipment** means the equipment at each Counter which is not owned by us. Day means a period of 24 hours commencing at midnight;
- (44) **CTAF-R Conditions** means Common Traffic Advisory Frequency – Radio conditions including, but not limited to, any requirement concerning the operation of an airport that does not have a control tower;
- (45) **Department** means the Commonwealth Department of Infrastructure and Regional Development;
- (46) **Disembarking Passengers** means all passengers on board an arriving aircraft that disembark from such aircraft, and includes Transit Passengers, Transfer Passengers, Infants, Domestic-On-Carriage and Positioning Crew, but excludes Operating Crew;
- (47) **Domestic** refers to any aircraft or passenger from origin or destination within Australia. Domestic-On-Carriage refers to a passenger on an International flight who travels from one Australian port to another as a Domestic passenger;
- (48) **Embarking Passengers** means all passengers boarding a departing aircraft, and includes Transit Passengers, Transfer Passengers, Infants, Domestic-On-Carriage and Positioning Crew, but excludes Operating Crew;
- (49) **ERSA** means En Route Supplement Australia;
- (50) **Facilities and Services** means all or any part of our aircraft landing, take-off, movement and parking facilities (including but not limited to the runways and taxi-ways), the Passenger processing facilities and services, and includes the Aviation Services, the Common User Facilities, and any other part of our Airport generally;
- (51) **FIDS** means flight information display systems;
- (52) **Financier** means the financier or group of financiers who provide debt facility to Us;
- (53) **Freight Landing Charge (FLC)** means Charges for freight operations calculated by a dollar amount multiplied by MTOW, as referred to in Schedule 2;
- (54) **Freight Operations** means any aircraft operations for the sole purpose of carrying freight, on a scheduled or non-scheduled basis internationally, domestically or regionally;
- (55) **General Airport Services** means those services and facilities that we provide to users of the Airport that are neither Aviation Services nor Government Mandated Services but include those services which are generally provided to airlines and aircraft operators at airports on commercial terms specific to each supply such as airline offices, airline commercially important passenger lounges, landside storage areas within terminal areas, staff car parking and leased sites and buildings for office, freight, aircraft maintenance, catering and similar services;
- (56) **General Aviation Operations** means any aircraft operations, other than Domestic or International operations, RPT Operations, Regional Operations or Charter Operations and for the purpose of these Conditions also includes Freight Operations;
- (57) **General Aviation Landing Charges (GALC)** means Charges for general aviation operations calculated by a dollar amount multiplied by MTOW, as referred to in Schedule 2;
- (58) **Glider** means a non-power driven aircraft or any aircraft normally described as a powered glider;

- (59) **Government Mandated Charges** means those charges levied by us and payable by you in accordance with these Conditions, resulting from charges levied on, or costs incurred by, us or you in respect of Government Mandated Services;
- (60) **Government Mandated Costs** means those costs incurred by us for providing to you the Government Mandated Services which are permitted to be passed through to airport users pursuant to a direction by the Minister;
- (61) **Government Mandated Services** means those services which we provide to you which are mandated by the Commonwealth Government (in applicable legislation and Ministerial or the Department directions) or other lawful authority (including the Department) which include, but are not limited to, the services set out at Condition 8;
- (62) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time;
- (63) **GST** means any tax imposed on a Supply by or through the *A New Tax System (Goods and Services Tax) Act 1999* and any successor of the GST Act;
- (64) **Infant** means a child under two (2) years of age who has not paid to occupy a seat on an aircraft;
- (65) **Interest Rate** means a rate of interest per year, which is 1 .5% per calendar month, as amended from time to time;
- (66) **International** means any aircraft or passenger arrived at the Airport from an origin other than Australia, or is departing to a destination that is not located in Australia, and also such passengers or aircraft in transit through the Airport en-route to or from an International port;
- (67) **Legislation** includes all Commonwealth and Western Australian Acts of Parliament, regulations, rules, orders, by-laws, ordinances and any other orders or directions of any government or statutory body relevant generally or specifically to the Airport or any person or aircraft using it;
- (68) **Major User** means:
- (a) the airline or aircraft operators that are the major users of our airports and together constitute at least 50% of the Aviation Charges revenue for our airport: and
  - (b) the Airline Operators Committee, if convened, representing airlines or aircraft operators using our Airport or any replacement body or organisation;
- (69) **MTOW** means the maximum take-off weight for an aircraft as specified by the manufacturer;
- (70) **Non-RPT Terminal Charge (NRTC)** means the charges referred to as the Non-RPT Terminal Charge (NRTC) in Schedule 2;
- (71) **Non-RPT Security Charge (NRSC)** means the charges referred to as the Non-RPT Security Charge (NRSC) in Schedule 2;
- (72) **NOTAM** means Notice to Airmen;
- (73) **Operating Crew** means your employees operating as flight or cabin crew on an arriving or departing aircraft;
- (74) **Operator** of the aircraft means the person by whom, or on whose behalf, the aircraft is operated or otherwise used at the Airport;

- (75) **Other Charges** means those charges specified in Item 2 of Schedule 6;
- (76) **Our Equipment** means any equipment (including without limitation the Counters) supplied by us under these Conditions but does not include any Counter Equipment or the terminal equipment supplied by the airline or aircraft operator;
- (77) **Overnight Parking** means any aircraft greater than 5,000kgs at parked on our main apron at the Airport for a continuous period of 4 hours or more.
- (78) **PA System** means our public address system throughout our Airport Terminal buildings;
- (79) **Passenger** means all persons on board an aircraft including persons travelling on points redemption bookings through frequent flyer programmes, transit travellers, and airline staff travelling on concessional fares, but excludes non-revenue travellers such as crew and infants;
- (80) **Passenger Service Charge (PSC)** means the charges for the use of the Airport's terminal and all other aeronautical facilities;
- (81) **Performance Measures** means the areas of Airport Facilities and Aviation Services that we measure our performance against. Our Performance Measures are in accordance with our legislative obligations;
- (82) **Person** includes a corporation or other organisation or enterprise;
- (83) **Personnel**, in respect of a party, means that party's employees, agents, consultants and subcontractors, and employees of its agents, consultants and subcontractors
- (84) **Personal Information** means information about an individual whose identity is apparent or can reasonable be ascertained from that information;
- (85) **PHIA Asset Trust** means PHIA Asset Pty Ltd ACN 608 106 074 as trustee for the PHIA Asset Trust;
- (86) **PHIA Operating Company** means PHIA Operating Company Pty Ltd ACN 608 090 517;
- (87) **Positioning Crew** means your flight and cabin crew, other than the Operating Crew, arriving into, or departing from the Airport on company duty travel for the purpose of positioning for, or returning from, crewing duties;
- (88) **Regional Operations** means any flying operations within Western Australia, which include RPT & Charter Operations;
- (89) **Registered** in relation to an aircraft means that the aircraft has a Certificate of Registration;
- (90) **RPT Charges** means those charges specified in Item 1 of Schedule 6;
- (91) **RPT Operations** or **Regular Public Transport Operations** means air service operations where, for a fee paid by passengers, the aircraft is operated according to fixed schedules over specific routes and is available to the general public on a regular basis, and includes any such services that may be diverted from another airport to our Airport;
- (92) **Rotary Wing Landing Charges (RWLC)** means landing Charges for non-fixed wing aircraft, as referred to in Schedule 2;
- (93) **Rotary Wing Passenger Screening Charges (RWPSA)** means charges for the use of the Airport's terminal and all other aeronautical facilities, as referred to in Schedule 2;

- (94) **Security Restricted Area** means all areas which are airside of the security perimeter on the Airport;
- (95) **Security Screening Charges (SSC)** means the charge for the recovery of costs associated with providing security for processing Domestic, International and other Passengers, as referred to in Schedule 2;
- (96) **Supply** is to be given the meaning it bears in the GST Act;
- (97) **Tax invoice** shall mean such document as prescribed by the GST Act which contains the information relating to a taxable supply required by the GST Act;
- (98) **Transfer Passengers** means a passenger who connects from one flight to another, including from one International flight to another without being processed by the Australian Customs Service at the Airport;
- (99) **Transit Passengers** means a passenger who continues their journey on a flight having the same flight number as the flight on which they arrived;
- (100) **Transport Security Program** means the Security-in-Confidence document detailing how the requirements of aviation security regulation and good aviation security management are satisfied at the Airport. Same is located at the Airport, and available to users of the Airport with a need-to-know on request;
- (101) **Use** means use of any of our Facilities and Services including but not limited to aircraft landing, taking off, taxiing or parking, or discharging or taking on passengers or cargo;
- (102) **VIC** means a Visitor Identification Card issued in accordance with the *Aviation Transport Security Regulations 2005* (Cth);
- (103) **Website** means the Airport website [www.porthedlandairport.com.au](http://www.porthedlandairport.com.au) ;
- (104) **We** or **us** or **Operator** or **our** means Port Hedland International Airport (PHIA Operating Company Pty Ltd. ABN 57 608 090 517) and includes our officers, employees, agents and the operator for the time being at each Airport; and
- (105) **You** or **your** means:
- (a) in the case of RPT aircraft, the holder of the Air Operator's Certificate at the time our Facilities and Services at the Airport/s are used;
  - (b) where the aircraft is registered, the holder of the Certificate of Registration at the time our Facilities and Services at the Airport/s are used;
  - (c) where the aircraft is not registered, the person who we reasonably believe is the owner or operator of the aircraft; and
  - (d) where a liquidator, provisional liquidator, receiver, administrator, trustee in bankruptcy or executor (administrator) is appointed in respect of a person liable for Charges the administrator is jointly and individually liable with that person or that person's estate for all Charges in respect of each use which occurs during the period of the administrator's appointment.

## Schedule 2 – Aviation Charges

The following Charges are w.e.f 1st July 2019 and as varied from time to time apply for the use of our Facilities and Services.

The following Charges are defined in Schedule 1 and their application is detailed below.

The following Charges are exclusive of GST.

The following Charges are for both International and Domestic operations.

Description	Fee	Comments
<b>Fixed Wing Passenger Service Charge (PSC)</b>		<i>Terminal Charges</i>
RPT Full fare one way	<b>\$22.71</b>	Charge applies to all Embarking Passengers and Disembarking Passengers on scheduled RPT Operations, unless other arrangements are agreed in writing.
RPT Half Fare one way	<b>\$11.38</b>	Charge applies to all Embarking Passengers and Disembarking Passengers on scheduled RPT Operations, unless other arrangements are agreed in writing.
Charter One Way	<b>\$22.71</b>	Charge applies to all Embarking Passengers and Disembarking Passengers on all Charter Operations, unless other arrangements are agreed in writing.
<b>Common User Charge (CUC)</b>	<b>\$1.46</b>	Charge applies to all Embarking Passengers on any aircraft using our Airport, where operators utilise our common user check-in facilities
<b>Security Screening Charge (SCS)</b> Per departing passenger	<b>\$9.78</b>	Charge applies to all Embarking Passengers (excluding transit passengers) on aircraft Operations, using the Security Restricted Area/Sterile Area.
<b>Landing Fee (LF)</b>		<i>Applies to aircraft above 5,700kg</i>
Fixed Wing per 1,000kg MTOW or pro rata above <b>5,700kg</b>	<b>\$23.00</b>	Charge applies to all Fixed Wing Aircraft using the Airport <b>above 5,700kg</b>
Freight Landing Fee per 1,000kg MTOW or pro rata	<b>\$23.00</b>	Charge applies to all dedicated Freight Aircraft using the Airport
<b>General Aviation Landing Charge (GALC)</b>		
Fixed Wing per 1,000kg MTOW or pro rata <b>below 5,700kg</b>	<b>\$23.00</b>	Charge applies to all Fixed Wing aircraft using the Airport <b>below 5,700kg</b>
Rotary Wing per 1,000kg MTOW or pro rata	<b>\$23.00</b>	Charge applies to all Rotary Wing aircraft using the Airport
<b>Aircraft Parking Charge (APC)</b>		<i>Applies after 4 hours on the ground and then every 24hours</i>
All Fixed Wing Aircraft per 1,000kg MTOW or pro rata <b>above 5,700kg</b>	<b>\$8.76</b>	Charge applies to all Fixed Wing Aircraft using the Airport <b>above 5,700kg</b> (excludes delayed RPT Aircraft)
All Rotary Wing Aircraft per 1,000kg MTOW or pro rata <b>above 5,000kg</b>	<b>\$8.76</b>	Charge applies to all Rotary Wing Aircraft using the Airport <b>above 5,000kg</b> unless other arrangements are agreed in writing.

**Note:** Touch & Go's training per session charge 1 x landing fee

### **Schedule 3 – After Hour Charges**

Currently no After Hour Charges are applicable.



## Schedule 4– Power of Sale

- (106) If we exercise our power of sale under those Conditions, we may sell or agree to sell your aircraft on the Airport (and any of its parts or accessories) or any other property of yours on the Airport, on the terms and conditions as we think fit. Such conditions will include but are not limited to the following:
- (a) the sale may be by public auction, private treaty or by tender, of cash or on credit;
  - (b) the sale may be for a price or prices, and any price or prices may be less than market value;
  - (c) the sale may be with or without special provisions about payment time, or means of payment; and
  - (d) the sale may allow the purchaser to secure the payment of the purchase price by other security, or without security, and on such other terms as we may agree, without us being responsible for loss.
- (107) We may engage or employ anyone in connection with the marketing for sale of your aircraft or any other property as we see fit.
- (108) We may enter into, rescind or vary any contract of sale, and resell without being responsible for loss the aircraft or the other property, and execute all documents in relation to the aircraft or the property being sold in your name and on your behalf.
- (109) We may do anything to complete any sale which we consider desirable and set aside from the proceeds of the sale any amount which we consider desirable to meet future claims until the possibility of claims being made has ended.
- (110) Without limiting any other provisions of this Schedule 4, in consideration of our allowing you or your aircraft to use the Airport and the Facilities and Services, you irrevocably appoint us severally as your attorney for the purposes of exercising our rights under this schedule including selling or transferring the aircraft (and any of its parts or accessories or other property of yours at the Airport).
- (111) We will apply the proceeds of a sale as follows:
- (a) in reimbursing ourselves for any costs associated with the sale;
  - (b) in or towards the satisfaction of any outstanding Charges; and
  - (c) if there remains any surplus, in paying to you or anyone else nominated by you.
- (112) If the proceeds of sale are less than the amount you owe us, the outstanding balance remains owing by you, and all of our rights against you remain unaffected.
- (113) No one dealing with us on a sale of any aircraft (or any of the parts or accessories) or other property of yours under these conditions is bound to inquire what our rights and powers to deal in that way are or whether these rights or powers have been properly or regularly exercised.

## Schedule 5 – Aviation Services

**Aircraft movement facilities and activities** means any of the following:

- (1) airside grounds, runways, taxiways and aprons; and
- (2) airfield lighting, airside roads and airside lighting; and
- (3) airside safety; and
- (4) nose-in guidance; and
- (5) aircraft parking; and
- (6) visual navigation aids; and

**Passenger processing facilities and activities** means any of the following the right to use in common with others:

- (1) forward airline support area services; and
- (2) aerobridges and airside buses (where provided); and
- (3) departure lounges and holding lounges (but excluding commercially important persons lounges); and
- (4) immigration and customs service areas; and
- (5) security systems and services (including closed circuit surveillance systems); and
- (6) baggage make up, handling and reclaim; and
- (7) public areas in terminals, public amenities, and public lifts, escalators and moving walkways (where provided); and
- (8) flight information display systems; and
- (9) any other Common User Facilities provided at the Airport.

## Schedule 6 – Common User Conditions

This Schedule 6 applies to the use of the Common User Facilities at the Airport Terminals.

### 1 Check-in, service and other Counters

#### 1.1 Counters

- (1) In this condition 1 of Schedule 6, **Counters** means Check-in Counters, Service Counters, Sales Counters, Baggage Counters and any other Counters used by you in the Check-in area of the Airport.
- (2) We will allocate Counters to you (and to other users of the Airport) in the manner which we determine in our absolute discretion.
- (3) Each Counter is equipped with access to the PA System.

#### 1.2 User of Counters

- (1) Care of Counters

You must take proper care of the Counters and follow our reasonable directions for their use.

- (2) Cleanliness of Counters

You must leave each Counter and the immediate area surrounding it in a tidy condition. You must remove your own equipment or stationery at the end of a period of use. You must put all rubbish into the bins provided and must not be dropped or left on conveyor belts or otherwise left in the area. If you do not comply with these requirements to our reasonable satisfaction, we will clean the Counter and surrounding area at your cost.

- (3) Security of Counter

You must take all reasonable precautions when using each Counter to prevent unauthorised entry into the Counter area and, in respect of the relevant Counter types, the BHS.

- (4) Leaving a Counter

When leaving a Counter, whether temporarily or at the end of your use, you must leave each Counter in a secure condition. In respect of the relevant Counter types, your last employee or agent at a Counter must ensure that the BHS is switched off, that all your Counters are logged off, and that the any security barriers, for the weigh scale, and between the Counters or any other purpose, are closed.

- (5) Damage to Counters

Except where there is a malfunction in Counters caused by our negligent act (and only to that extent), you indemnify us for any damage to them caused by operation of them or in conducting your activities at the Airport.

### **1.3 Ownership of Counter Equipment**

(1) Owner of Counter Equipment

The Counter Equipment remains the property of the owner of that equipment or the person entitled to ownership of that equipment under any agreement to the contrary between the airline and the supplier.

(2) Other equipment we own

The Counters and other equipment provided by us remain our property.

(3) No parting with possession of equipment we own

You must not part with possession or control of Our Equipment unless we ask you to in writing.

## **2 Baggage handling system (BHS) conditions**

### **2.1 BHS**

(1) In this condition 2 of Schedule 6, the BHS includes Check-in injector belts, takeaway conveyors, transport conveyors, checked baggage screening, make-up conveyors, oversized baggage conveyors and baggage claim units. Of these, injector belts, make-up conveyors and claim units are subject to allocation. The remainder of the baggage belt system is a common use system.

(2) We will provide the BHS for Domestic and International operations, and for Regional Operations, Charter Operations, Helicopter Operations and General Aviation Operations in our Airport if so required.

(3) We will allocate the relevant elements of the BHS to you in the manner determined in our absolute discretion.

### **2.2 Use of the BHS**

(1) Care of BHS

You must use the BHS in a careful manner and follow our reasonable directions for its use.

(2) Cleanliness of BHS

You must leave each allocated part of the BHS in a tidy condition. You must put all rubbish into the bins provided and must not be dropped or left on the BHS. If you do not comply with these requirements to our reasonable satisfaction, we will clean the Counter adjacent to the BHS and surrounding area at your cost.

(3) Security of BHS

You must take all reasonable precautions when using the allocated elements of the BHS to prevent unauthorised access to them. Where an allocated element provides potential airside access you must take all reasonable steps to ensure this access cannot be used by unauthorised persons.

(4) Leaving the BHS

When leaving the allocated elements of the BHS, whether temporarily or at the end of your use, you must leave them in a secure condition. Where an allocated element provides potential airside access you must take all reasonable steps to ensure this access cannot be used by unauthorised persons. In respect of the relevant Counter types, your last employee or agent at a Counter must ensure that the BHS specifically associated with that Counter is switched off.

(5) Training of your personnel and your responsibility

You must ensure that your staff operating the BHS are trained to operate it in a manner to avoid damage to it, to other property and to persons. You accept responsibility for the training of your staff in the use of the BHS.

(6) Damage to BHS

Except where there is a malfunction in the allocated BHS elements caused by our negligent act (and only to that extent), you indemnify us for any damage to them caused by your operating them or in conducting your activities at the Airport.

### 2.3 Ownership of BHS

(1) Owner of the BHS

The BHS remains our property or the property of any other person entitled to ownership of the BHS under any agreement to the contrary between the airline and the supplier of the equipment.

(2) No parting with possession of equipment we own

You must not part with possession or control of Our Equipment unless we ask you to in writing.

## 3 Departures Counter conditions

### 3.1 Counters

(1) In this condition 3 of Schedule 6, **Counters** includes Departure Gate Counters, Service Counters and any other Counters used by you in the Departures Area of the Airport.

(2) We will allocate the Counters to you in the manner determined in our absolute discretion.

(3) Each Counter will be equipped with access to the PA System.

### 3.2 Use of Departure/Arrival Equipment

(1) Care of Counters

You must take proper care of the Counters and follow our reasonable directions for its use.

(2) Cleanliness of Counters

You must leave each Counter and the immediate area surrounding it in a tidy condition. You must remove your own equipment or stationery at the end of a period

of use. You must put all rubbish into the bins provided and must not be dropped or otherwise left in the area. If you do not comply with these requirements to our reasonable satisfaction, we will clean the Counter and surrounding area at your cost.

(3) Security of Counter

You must take all reasonable precautions when using each Counter to prevent unauthorised entry into the Counter area.

(4) Leaving a Counter

When leaving a Counter, whether temporarily or at the end of your use, you must leave each Counter in a secure condition. In respect of the relevant Counter types, your last employee or agent at a Counter must ensure that all your Counters are logged off, and that any security barriers are closed.

(5) Training of your personnel and your responsibility

You must ensure that your staff operating the Counters are trained to operate them safely and in a manner to avoid damage to them, to other property and to persons. You accept responsibility for training your staff to use the Counters.

(6) Damage to Counters

Except where there is a malfunction in the Counters caused by our negligent act (and only to that extent), you indemnify us for any damage to the Counters caused by your operation of the Counters or in conducting your activities at the Airport.

(7) Cleaning of Departure Lounge

You must leave the area surrounding the departure gates and desks in a tidy condition. If you do not, we will clean the area at your cost.

### **3.3 Ownership of Counter Equipment**

(1) Owner of Counter Equipment

The Counter Equipment remains the property of the owner of that equipment or the person entitled to ownership of that equipment under any agreement to the contrary between the airline and the supplier.

(2) Other equipment we own

The Counters and other equipment provided by us remain our property.

(3) No parting with possession of equipment we own

You must not part with possession or control of Our Equipment unless we ask you to in writing.

## **4 FIDS**

### **4.1 FIDS**

- (1) We will provide the FIDS core system that provides the information display systems including the central database, the distribution system and the display devices in public areas.

- (2) The use and operation of the FIDS will be in our absolute discretion to achieve efficient operation of our Airport.

#### **4.2 FIDS information**

- (1) Accurate information on FIDS

You must ensure that the information displayed on FIDS is current and accurate.

- (2) FIDS information is confidential

The information on FIDS is confidential information. You must not give any other airlines information on FIDS to anyone else without our prior written consent other than information displayed in a public area.

- (3) Your warranty in relation to FIDS information

- (a) The necessary data to generate your logo and other material in FIDS remains your property.

- (b) You warrant that you hold copyright in that logo and that your use of the logo and other material does not breach anyone else's copyright or other intellectual property right.

- (c) We must not give that logo to anyone else without your written consent.

- (4) Care of FIDS

You must use the FIDS in a careful manner and follow our reasonable directions for its use.

- (5) Security of FIDS

You must take all reasonable precautions when using the FIDS to prevent unauthorised use.

- (6) Training of your personnel and your responsibility

You must ensure that your staff operating the FIDS are trained to operate it in a manner to avoid damage to it, to other property, to other information and to persons. You accept responsibility for the training of your staff in the use of the FIDS.

- (7) Damage to the FIDS

Except where there is a malfunction in the FIDS caused by our negligent act (and only to that extent), you indemnify us for any damage to it caused by operation of the FIDS or in conducting your activities at the Airport.

#### **4.3 Provision of additional aids**

We may install additional FIDS display panels to private areas nominated by you provided you pay an agreed amount to cover the cost of installing the connection and the cost of the display devices.

## **5 PA System**

### **5.1 PA System**

- (1) In this condition 5 of Schedule 6, PA System means the core system including the counter connection points, processors and amplifiers, the distribution system and the speakers in public areas.
- (2) We will provide a PA System throughout the Airport.
- (3) The use and operation of the PA System will be in our absolute discretion to achieve efficient operation of our Airport.

### **5.2 PA System use**

- (1) Your use of the PA System
  - (a) You must act reasonably in the use of the PA System and, without limitation, you must restrict your announcements to whatever is operationally required. You must comply with our reasonable directions concerning the use of the PA System. Care of PA System
  - (b) You must use the PA System in a careful manner and follow our reasonable directions for its use.
- (2) Security of PA System

You must take all reasonable precautions when using or in charge of a PA System connection to prevent unauthorised use.
- (3) Training of your personnel and your responsibility

You must ensure that your staff operating the PA System are trained to operate it in a manner to avoid damage to it or adverse impact to persons. You accept responsibility for the training of your staff in the use of the PA System.
- (4) Damage to the PA  

Except where there is a malfunction in the PA System caused by our negligent act (and only to that extent), you indemnify us for any damage to it caused by your operation of the PA System or in conducting your activities at the Airport.

### **5.3 Ownership of PA System**

- (1) Owner of the PA System

The PA System remains our property or the property of any other person entitled to ownership of the PA System under any agreement to the contrary between the airline and the supplier of the equipment.
- (2) No parting with possession of equipment we own

You must not part with possession or control of Our Equipment unless we ask you to in writing.



#### **5.4 Provision of additional aids**

We may install additional PA System connection to private areas nominated by you provided you pay an agreed amount to cover the cost of installing the connection and the cost of the PA System devices.

### **6 General Common User Conditions**

#### **6.1 Repair and maintenance**

(1) Your obligations

You must pay us for any repairs to, and maintenance of, the Common User Facilities or any other property caused by the neglect, misuse or damage by you, your employees, agents or contractors.

(2) Responsibility for employees and agents

You are responsible for the conduct of your employees and agents. You must ensure they observe these Common User Conditions and the Conditions generally.

#### **6.2 Use of Our Equipment**

(1) Proper care

You must take proper care of Our Equipment and follow our reasonable directions for its use.

(2) Repair of Our Equipment

You must tell us immediately if any of Our Equipment is not working or has been damaged. We will repair Our Equipment as quickly as practicable. You must not allow any person except our employees, contractors or agents to repair Our Equipment.

(3) Access to carry out repairs

You must give us reasonable access to inspect and to repair Our Equipment.

#### **6.3 Termination of your right to use the common use equipment**

(1) We may terminate your right to use the any equipment specified in this Schedule 6 immediately:

(a) by giving you written notice if you omit or fail to observe any of these Common User Conditions, and you do not remedy the breach within 10 Business Days of receiving a written notice from us to do so; or

(b) when you cease to conduct or provide regular passenger air services at our Airport.

(2) If your right to use Counters and the BHS ceases, or if we have terminated your right, you must immediately pay to us any amounts outstanding for Charges payable under these Conditions, which includes Charges payable under these Common User Conditions.

#### **6.4 Handling agents**

- (1) No inconsistent agreements with handling agents

Where you have an agreement with a handling agent, the terms of that agreement must not be inconsistent with any of these Common User Conditions.

- (2) Handling agent to know about these conditions

You must inform the handling agent of your obligations under these Common User Conditions.

- (3) Invoicing the charges

We may send our invoices for the Charges payable under these Common User Conditions or the Conditions generally directly to your handling agent. You acknowledge that despite this you are the person responsible for payment of the Charges in accordance with the terms of our invoice.

#### **6.5 Acts, regulations and rules**

- (1) Our obligations under relevant Legislation

You accept that we are responsible for administering and operating the Airport in accordance with all relevant Legislation, including the *Civil Aviation Act 1988* and Regulations and the *Air Navigation Act 1920* and Regulations, all relevant Air Services Australia publications and any direction from the Civil Aviation Safety Authority; all requirements of Airservices Australia and directions from CASA applicable to the conduct of civil aviation to, at and from the Airport.

- (2) No interference from you

You must ensure that your employees, contractors and agents do nothing to prevent us from observing our obligations under these Acts and any by-laws made under those Acts and to indemnify us against any claim if they do.

- (3) Our rules

You agree that we can make rules for the day to day operation of our Airport that will bind you. You and your employees and agents must comply with those rules at all times.

#### **6.6 Air Navigation Regulations**

You and we acknowledge that all carriers are required to operate in accordance with, without limitation, the Air Navigation Regulations and all other applicable Australian laws and International instruments.

#### **6.7 Prohibition on conducting unaccompanied baggage operations**

You must not use any Counter or the BHS to accept from any person baggage or cargo for transportation and distribution baggage which is being sent as unaccompanied baggage or cargo.

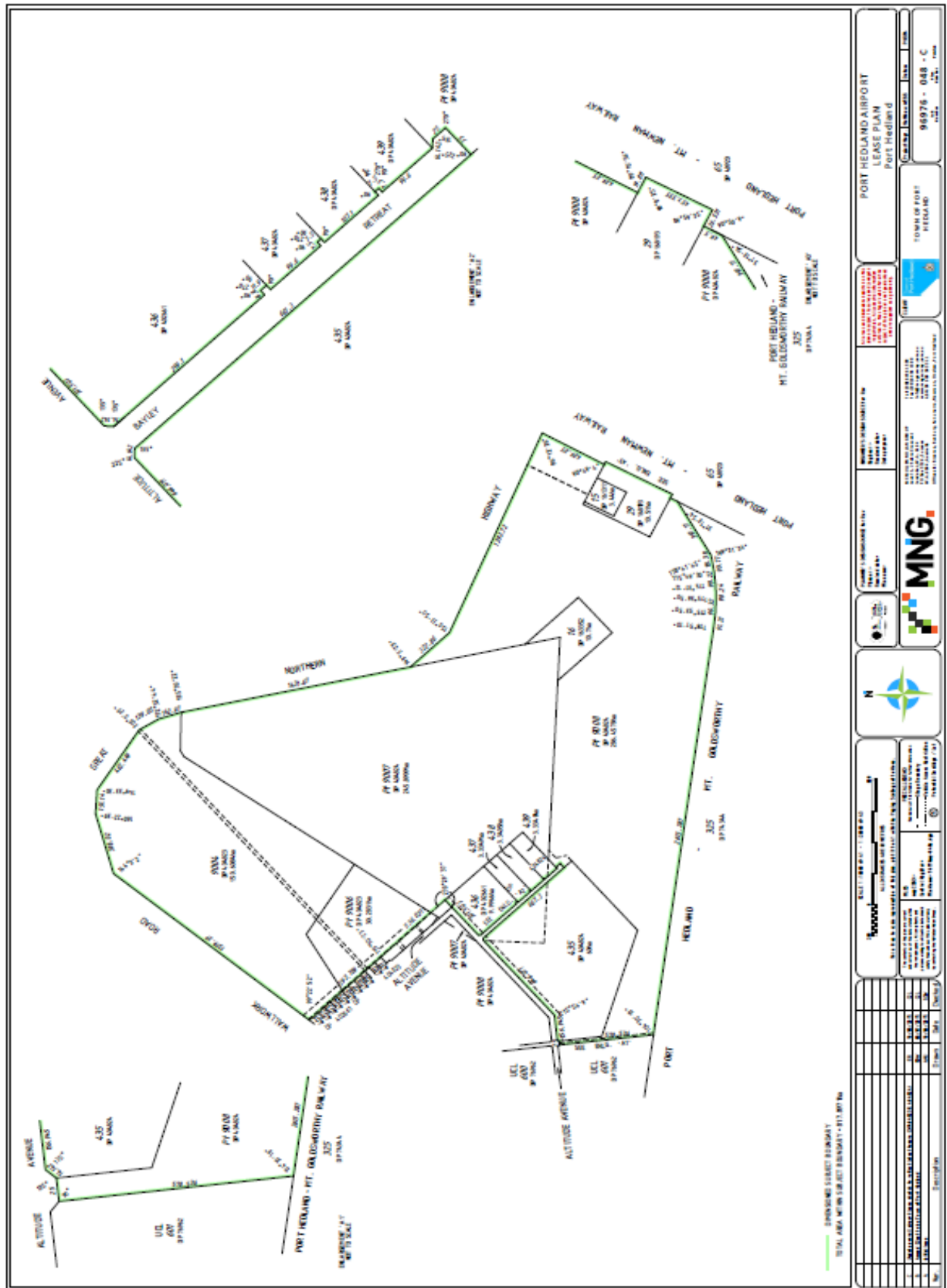
## Schedule 7 – Airport Land

The area extending to 817.8971 hectares and comprising:

- (a) the whole of Lot 9004 on Deposited Plan 404823, being 150.6084 hectares;
- (b) the whole of Lot 435 on Deposited Plan 404824, being 60 hectares;
- (c) the whole of Lot 436 on Deposited Plan 402661, being 9.9966 hectares;
- (d) the whole of Lot 437 on Deposited Plan 404824, being 3.3349 hectares;
- (e) the whole of Lot 438 on Deposited Plan 404824, being 3.3405 hectares;
- (f) the whole of Lot 439 on Deposited Plan 404824, being 3.3349 hectares;
- (g) the whole of Lot 16 on Deposited Plan 163352, being 10.7 hectares;
- (h) the whole of Lot 15 on Deposited Plan 161311, being 3.44 hectares;
- (i) the whole of Lot 29 on Deposited Plan 168193, being 10.51 hectares;
- (j) part of Lot 9006 on Deposited Plan 404823, being 30.2831 hectares;
- (k) part of Lot 9007 on Deposited Plan 404824, being 245.8909 hectares; and
- (l) part of Lot 9008 on Deposited Plan 404824, being 286.4578 hectares,

as shown outlined in green on the plan attached at Schedule 8.

Schedule 8 – Plan of Airport Land



					
<p>PROJECT: PORT HEDLAND AIRPORT LEASE PLAN</p> <p>DATE: 15/05/2019</p>		<p>CLIENT: MNG</p> <p>PROJECT: PORT HEDLAND AIRPORT LEASE PLAN</p>		<p>SCALE: 1:1000</p> <p>DATE: 15/05/2019</p>	
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